

**BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

IN THE MATTER OF:

**Request For Review of Decisions of
Universal Service Administrator**

**SELMA UNIF SCHOOL DISTRICT
Selma, California**

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CC Docket No. 02-6

Request for Review

The Selma Unified School District (“Selma Unified” or the “District”), pursuant to and in accordance with Sections 54.719 – 54.721 of the Federal Communication Commission’s (“FCC” or “Commission”) rules, hereby requests the FCC review and overturn the funding denial decision issued by the Universal Service Administrative Company (“USAC”) as administrator of the National Education Rate Program (“E-rate”). Selma Unified respectfully submits that under the circumstances there is good cause for the Commission to overturn the funding denial. In particular, Selma Unified¹ appeals the August 28, 2012 Funding Commitment Decision Letter². *See Exhibit 1, Funding Commitment Decision Letter.*³

In the Funding Commitment Decision Letter, the reason for denial of FRN 2377501 states:

“This FRN is denied because the Item 21 is an FCC Form 471 Window filing requirement. You failed to provide sufficient documentation demonstrating the Item 21 Attachment was submitted timely. FCC Forms 471 with Item 21 Attachments that met the FCC 471 Window requirements have funding priority over applications received after the filing deadline. Given that funding demand for FCC Forms 471 filed within the window exceeds the amount available for commitment, we cannot consider the FRN for funding.”

¹ Selma Unified’s Billed Entity Number (BEN) is 144059.

² The Form 471 in question is 826498. The funding request number involved is: 2377501.

³ This Request for Review is timely filed in accordance with Sections 54.720 and 1.4 of the Commission’s Rules within 60 days of the denial.

The SLD's denial decision is without merit and without justification. Selma Unified respectfully requests the Commission to overturn the denial and return FRN 2377501 for full review and funding. Any other action would be contrary to the spirit and the goals of the E-Rate program.

Background

Selma Unified is a school district located in California's Central Valley and is comprised of 11 schools and more than 6,000 students.⁴ Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts on eligible telecommunications services, Internet access, internal connections, and basic maintenance of internal connections⁵. Under this regulatory authority, Selma Unified annually submits E-rate application(s) for eligible services. During the application period for the 2012-13 E-rate funding year, Selma Unified submitted two Forms 471 – one for Priority One services and one for Priority Two services. The Form 471 for Priority One services included 10 separate Funding Requests. In the Funding Commitment Decision Letter dated August 28, 2012, nine funding requests were approved and one – FRN 2377501 – was denied for the reason provided above.

Item 21 Attachments

This Request for Review centers only on an issue with the denied FRN's Item 21 Attachment. Under current SLD guidance, "each funding request on the FCC Form

⁴District information available at:

<http://www.selmausd.org/1812101125124710180/blank/browse.asp?A=383&BMDRN=2000&BCOB=0&C=56122>

⁵ 47 C.F.R. §§ 54.502, 54.503

471...must include a description of the products and services for which services are sought.”⁶ While for the majority of the E-rate program’s existence, an applicant could submit the Item 21 Attachment at any time after the filing of the FCC Form 471 until the point of application review, applicants were required in Funding Year 2011 by the FCC’s *Sixth Report and Order*⁷ to ensure the filing of the Item 21 Attachment was coincident with the close of the FCC Form 471 filing window.⁸ Because this was a major program change, there was a high incidence of unintentional non-compliance and during Funding Year 2012, an Item 21 Attachment filing grace period was universally granted to all E-rate applicants until May 2, 2012 – a period well after the formal close of the FCC Form 471 application window.

Timeline

As the nearing of the filing window approached, Selma’s contractually retained E-rate consulting firm, CSM Consulting, Inc., (“CSM”) prepared Item 21 Attachments for each funding request created on the Form 471. A review of the FRNs and prepared Item 21 Attachments confirmed that everything was in order and in compliance with program rules.

March 26, 2012 - CSM contacted USAC for confirmation of the receipt of the Item 21 Attachments for each FRN. A list of FRNs for a number of clients was included with the request, including all FRNs for Selma Unified. FRN 2377501 was included on this list. *See Exhibit 2, List of Districts and FRNs provided to USAC.* This was submitted via the “Submit A Question” feature on the USAC website and was subsequently assigned Case Number 22-348878.

⁶ <http://www.usac.org/sl/applicants/step04/item-21.aspx> (retrieved October 17, 2012)

⁷ http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-10-175A1.pdf

⁸ Ibid.

March 27, 2012 - Confirmation was received from USAC that all Item 21 Attachments for each FRN had been received. The exact language of the email stated: “Thank you for your inquiry. The Item 21 attachments were received for all of the funding requests in your attached list.” *See Exhibit 3, E-mail Dated March 27, 2012.*

June 26, 2012 - Selma received a Program Integrity Assurance (“PIA”) letter stating: “You were previously informed that your Item 21 Attachment(s) for FY2012 FCC Form 471 application #826498 FRN 2377501 was not received. We requested a copy of the Item 21 Attachment and proof of timely submission. To date, we have not received a response...” To date, applicant ***had not*** received any notification of a missing Item 21 Attachment, only confirmation that all attachments had been received. As response, Selma provided proof of submission of the Item 21 Attachments – as already established by the events in late March.

July 10, 2012 – PIA contacts Selma’s E-rate consultant via email and indicates that while PIA has receipt of the Item 21 Attachments and Proof of Submission, there is no Item 21 Attachment for FRN 2377501. *See Exhibit 4, Email Dated July 10, 2012.* This is the first time that Selma is aware of any sort of problem with the receipt of the Item 21 Attachment.

July 17, 2012 – A second PIA letter arrived in the mail, requesting validation of the requested dollar amount in FRN 2377501. This led the applicant to believe that the Item 21 Attachment issue had been sufficiently resolved based on previous information provided by the applicant to PIA.

July 25, 2012 - An email arrives from PIA to the E-rate consultant and explains that the FRN would be denied for lack of an Item 21 Attachment. Selma begins an in-

depth review of the issues and realizes that while an Item 21 Attachment was indeed submitted for FRN 2377501, it reflected incorrect data from the Block 5 calculation.⁹ However, the Item 21 Attachment was timely submitted. Selma had been given no notice or opportunity to correct the data in the incorrect Item 21 Attachment.

CSM respectfully disagreed with the PIA reviewer's conclusion and immediately contacted USAC's Ombudsman group for assistance in rectifying the correctable error prior to the issuance of the denial.

July 26, 2012 – Ombudsman David LeNard responds and advises that Selma should wait for the arrival of the denial on the Funding Commitment Letter, thereby triggering an appealable event for the district upon receipt of the letter. *See Exhibit 5, Email dated July 26, 2012 from David LeNard.* Curiously, it was suggested that Selma should immediately appeal directly to the FCC as USAC refused to acknowledge the correctable error that had occurred; instead, they obstinately viewed the situation as a rule violation by standing on the premise that the Item 21 attachment had not been submitted at all.

Bishop Perry

Much has been written and argued of the FCC's *Bishop Perry* decision, released May 19, 2006¹⁰. In *Bishop Perry*, the FCC directed USAC to "provide all E-rate applicants with an opportunity to cure ministerial or clerical errors" within their E-rate applications. While the FCC decision focused primarily on the errors found in Forms 470 and 471, it would logically follow from the language of the decision that the FCC

⁹ In preparation of Item 21 Attachments, data from the previous application year is copied over to begin the baseline preparation of the current year attachments. It is suspected that the attachment was not updated and therefore did not match the FY2012 FRN 2377501 data.

¹⁰ http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-06-54A1.pdf

would expect similar treatment to easily correctable application process errors. Indeed, this case at hand was undoubtedly exactly what *Bishop Perry* had in mind when the FCC crafted the language of the decision and departed from significant Commission precedent.

In the case of Selma Unified, it is clear that USAC is also a party to the error in this case by providing confirmation that all Item 21 Attachments for Selma Unified had been received. That, in itself, is *prima facie* evidence of the complex and intense nature of the E-rate filing process – the program administrator was equally confused about whether or not the Item 21 Attachment had been submitted. Simply allowing the corrections necessary to the Item 21 Attachment during the PIA process would have rectified the entire chain of events. However, despite the error by USAC, despite the confirmed submission of the Item 21 Attachments, despite the events that transpired during PIA, despite an outreach effort to USAC ombudsman to address the issue prior to formal denial...USAC continued to process the denial. The irony of Selma's case is that Selma **DID NOT** file their Item 21 Attachments late – they filed on time and received confirmation of the submission. Selma **made a mistake on an Item 21 Attachment**...a simple, easily correctable mistake that was never addressed in PIA review. Rather, the Item 21 was marked as “not submitted” and was simply denied by USAC. If one thing is clear and tantamount to the FCC's point in *Bishop Perry*, it is that USAC should NOT impede the spirit and goals of the E-rate program by unending focus on procedure. Yet, in this case, USAC proceeded as if *Bishop Perry* never was released.

To withhold funding from the district because of a very simple and easily correctable mistake, one where we are unable to even assign error, is completely

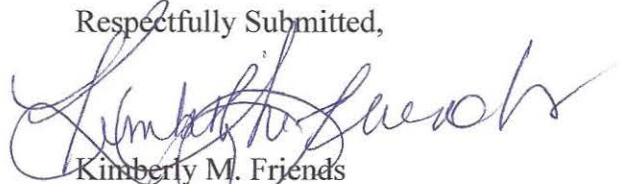
counterproductive to the goals and objectives set forth by the Commission and to the very life and spirit created and encouraged by the FCC's own words in *Bishop Perry*.

Conclusion

Simply put, USAC erred in denying Selma Unified's FRN 2377501. Selma believed that all Item 21 Attachments had been submitted and USAC confirmed that belief. May we suggest that allowing the SLD to make denials based on mutual error is a dangerous precedent? Such a presupposition is completely contrary to the intent of the *Bishop Perry Decision* and everything it was meant to stand for.

We respectfully request that the SLD's funding denial decision should be reversed and the funding request remanded to SLD for full consideration of funding.

Respectfully Submitted,



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